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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.54 of 2001

G. Karunanidhi Petitioner

vs.

1 The Indian Bank
represented by its Chairperson &
Managing Director
31, Rajaji Salai
Chennai - 600 001

2 The Executive Director
Indian Bank
31, Rajaji Salai
Chennai - 600 001

3 The General Manager (Inspection)
Indian Bank
31, Rajaji Salai
Chennai - 600 001 Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the third respondent bearing no.6779:99:VG dated 21.12.1999 read with the order dated 29.02.2000 passed by the second respondent read with the order dated 29.07.2000 passed by the first respondent, quash the same and consequently direct the respondents to reinstate the petitioner in service with effect from 21.12.2000 with back-wages, continuity of service and all other attendant benefits.

For petitioner Mr. R. Muthukumarasamy, Senior Counsel
for Mr. K.A. Ravindran

For respondents Mr. G. Venkataraman
for M/s. Aiyar & Dolia

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O R D E R

The petitioner has filed this writ petition, calling in question, the legality of the order of:

(i) the third respondent, the Disciplinary Authority in and by which he has been imposed the major penalty of compulsory retirement,

(ii) the second respondent, the Appellate Authority confirming the order of the third respondent, the Disciplinary Authority and

(iii) the first respondent, the Reviewing Authority rejecting the Review Application.

2. The petitioner's case, in brief, as could be seen from his affidavit, is as under:

a. The petitioner joined the services of the respondent bank in the year 1974 and was working as Branch Manager of the Kotturpuram Branch from 08.07.1993 to 31.03.1996. While was working as Branch Manager of the Kotturpuram Branch of Indian Bank in 1994, he was informed over telephone by the then Chairman and Managing Director (CMD) that one C.R. Viswanathan would get in touch with him regarding an International Women's Football Tournament in the name of the then Chief Minister J. Jayalalitha and accordingly, an account was opened in the name of "Dr. J. Jayalalitha Gold Cup International Women's Football Tournament - 1994" ("Football Tournament" for short) by the said C.R. Viswanathan, Organising Secretary of the Tournament. Based on the instruction from the CMD to allow Temporary Over Drafts (TODs) to the extent of Rs.150 lakhs towards the Football Tournament Account as a temporary arrangement and that the same would be adjusted by Government grants and other collections and also based on his assurance that he would personally monitor such collections, TODs were allowed by the petitioner and the matter was also reported to the Regional Manager, Zonal Manager and the CMD and confirmation obtained. Though TODs were originally meant for a period of four months, as Government grants and collections did not materialise as expected and TODs remained unsettled, the petitioner wanted to meet the Chief Minister/Chief Secretary/any other Government officials for the purpose of recovery. But, the CMD had intervened stating that the matter was being dealt with at the top level and assured the petitioner that he would liaise with the Government officials for recovery of money and also advised the petitioner not to embarrass C.R. Viswanathan.

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b. While so, the petitioner received a show-cause notice dated 15.04.1996 from the Chief Manager, Vigilance stating that during his tenure as Branch Manager of the Kotturpuram Branch from 08.07.1993 to 31.03.1996, he had committed serious irregularities in respect of appraisal, disbursal and follow up of credit limits sanctioned to the Football Tournament because of which the bank was facing difficulties in recovering the liability of Rs.194 lakhs as on 14.12.1996. The petitioner gave his reply stating that:

i he had obtained confirmation for the facilities allowed;

ii the letter dated 09.11.1994 from the Zonal Manager to the CMD contains the notings of the CMD himself;

iii he had taken all efforts in this regard and documents were available to prove his case;

iv the account was referred to him by his superiors, viz., the Assistant General Manager, Regional Office, Madras (South), the Zonal Manager and the then CMD and

v C.R. Viswanathan, claiming that he was to be designated as the Organising Secretary and the Organising Committee under formation included high dignitaries like the Chief Secretary, Finance Secretary, Education Secretary, Director General of Police and several others, informed him that there are no separate constitution and by-laws as the Football Tournament being a one-time event;

c. The respondent bank, not being convinced with the petitioner's explanation, issued a charge sheet dated 18.03.1997 which consisted of the following charges:

i that he had allowed huge TODs without verifying basic information of the borrower Association;

ii that he had allowed several overdrafts for which he had no powers and that he had not obtained confirmation for the same and thus misused his official position;

iii that though he permitted huge overdrafts, he had not cared to take documents and thus rendered the bank without recourse to proceed for recovery; and

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iv that he had not taken follow up action in getting the documents or in recovery of TODs granted.

d. To the charge-sheet referred to above, the petitioner submitted his explanation dated 25.04.1997 reiterating his earlier stand that all his actions were based on the instructions of his superiors and that every TOD which he allowed was with the confirmation of his superiors. Ten documents were also enclosed with the petitioner's explanation to show that his actions were not based on mere telephonic instructions and that his explanation was genuine.

e. Despite receipt of the petitioner's explanation dated 25.04.1997 together with enclosures, the bank, by its letter dated 17.05.1997, ordered a departmental enquiry on the petitioner in which he participated and marked 31 documents and was represented by a Defence Assistant, though no witness was examined on his behalf. For its part, the bank marked 40 documents and examined one Shyam Sundara Babu, Senior Manager.

f. In the enquiry, the petitioner was denied the opportunity to scrutinize the files and documents at the Regional Office / Zonal Office/ Head Office stating that his request for scrutiny of files was irrelevant on the ground that all the records relating to the transaction were available at the Branch Office.

g. In the domestic enquiry, the Management Witness stated in his cross examination that:

i he had seen from DEX 4 that Chief Secretary of the State had written to the CMD that the tournament in question was approved by the Government and was sanctioned by the Football Association/Federation including FIFA and that the Chief Secretary had sought the help of the CMD to sponsor the expenses roughly estimated as Rs.30 lakhs;

ii from DEX 5 and 7, it is clear that the opening of the account in question was brought to the notice of the Government of Tamil Nadu;

i from DEX 13, it was clear that the Zonal Manager had written a letter on 09.11.1994 to the CMD informing him about the TOD that was allowed on 11.10.1994 and was confirmed by the Assistant General Manager, Chennai (S) when the balance was Rs.1,40,40,761.02 and that CMD's confirmation for Assistant General Manager's action was requested;

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iv it was seen from the various documents that all the disbursements were reported to the Regional Office and confirmation was obtained; and

v it was seen from DEX 9 that the Government of Tamil Nadu had made a budgetary provision for the expenditure of this Tournament

and therefore, in his opinion, there was nothing to question the bona fides of the account.

h. The defence, while cross-examining the Management Witness, also referred to Clause 15.4 of MEX 40, the Manual of Instructions relating to opening of accounts for Associations, Committees, Clubs and Societies which while dealing with accounts in which no regular rules are drawn up and which are held only temporarily states that an account may be opened for reliable persons of standing and status after the Manager satisfies himself about the bona fides of the party. In this connection, DEX 25 was put to the Management Witness in which the credentials of C.R. Viswanathan was mentioned.

i. In his written brief to the Enquiry Officer, the petitioner referred to the various circumstances which led to his actions and requested that the entire case may be looked at taking into consideration the fact that he did whatever his superiors asked him to do in good faith. The bank never contended that the veracity of the document was in dispute nor was its case that the petitioner's actions were for his personal gain. Further, the Presenting Officer has stated that the second charge was not proved since the TODs had the confirmation of the Assistant General Manager / Zonal Manager / CMD.

j. Despite such glaring evidence against the bank, the Enquiry Officer submitted his report finding the petitioner guilty of charges 1, 3 and 4 and holding the second charge as partly proved and partly not proved.

k. The petitioner sent his representation to the findings of the Enquiry Officer on 31.07.1999 stating that:

i the Enquiry Officer failed to see the very unusual nature of the entire transaction;

ii the findings of the Enquiry Officer are perverse and biased inasmuch as the various documents marked both by the Management and the defence were not considered in a fair manner; and

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iii the Enquiry Officer failed to consider the innumerable documents marked by both sides which would bring out his innocence clearly.

l. Yet, the Disciplinary Authority, the third respondent, by his order dated 21.12.1999, concurred with the Enquiry Officer and imposed the punishment of compulsory retirement, questioning for the first time, the veracity of the correspondence between the Chief Secretary and the CMD.

m. The appeal filed by the petitioner before the second respondent on 19.01.2000 stood rejected on 29.02.2000 pursuant to which, the petitioner preferred a Review before the first respondent on 17.04.2000 and it was also rejected on 29.07.2000.

3. Thus, being aggrieved by the three orders referred to above passed by each of the respondents, the present writ petition seeking to quash the same and to direct the respondents to reinstate the petitioner in service with effect from 21.12.2000 with back-wages, continuity of service and all other attendant benefits.

4. The respondents have filed their counter contending that:

a. the petitioner did not possess clean record throughout his career and explanation was called for from him on four occasions for the irregularities committed in granting loans, non-execution of lease deed in favour of the bank and procedural lapses committed in the opening of account in the case of Jeppiar Farms and his reply was accepted in respect of two cases for which explanations were called and he was warned to be careful in future in respect of the remaining two cases and two more charge sheets were issued to him and kept in reserve in view of his compulsory retirement;

b. the petitioner while working as Manager in the Kotturpuram Branch of Indian Bank from 08.07.1993 to 31.03.1996 committed serious irregularities in respect of TODs granted to the Football Tournament since the reply given by the petitioner was not found satisfactory, the Disciplinary Authority issued charge sheet to the petitioner on 18.03.1997 levelling four charges;

c. As per Regulation No.24 of the Indian Bank Officer Employees (Conduct) Regulations, 1976, a breach of any of the conduct regulations constitutes a misconduct that is punishable under Regulation 4 of the Indian Bank Officer Employees (Discipline & Appeal) Regulations, 1976 as amended;

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d. though the borrower is an association organised by Tamil Nadu Football Association, there is no record available regarding its constitution or the full particulars of the borrower and despite the same, the petitioner had allowed huge temporary overdrafts even without verifying the basic and essential information namely the constitution, members of the association, its by-laws, etc;

e. even though the petitioner had permitted huge temporary overdrafts, he had not even cared to take any documents and thus, rendered the bank without recourse to proceed for recovery of its liability of Rs.194.09 lakhs as on 14.02.1996;

f. as the statement of defence submitted by the petitioner was not satisfactory, the preliminary sitting of the enquiry was held on 20.06.1997 and the regular enquiry was conducted on 23.02.1999; the petitioner was given ample opportunity along with his Defence Assistant to inspect the documents relied on by the Bank Management and both the petitioner and his Defence Assistant confirmed that they had completed the inspection of listed documents and had no objection for these documents being marked;

g. it is not open to the petitioner to make reference to documents imagined by him as if they are in existence in some other office and on that allegation plead that such imaginary documents were not made available to him without specifying what those documents are;

h. it is in no manner established by the petitioner that C.R. Viswanathan was the organising Secretary of the Association and he has not established or shown proof as to the official constitution of the association, the constitution of the Organising Committee and the appointment of C.R. Viswanathan as its Organising Secretary;

i. the petitioner's request for perusal of the files of Regional Office/Zonal Office/Head Office was in the nature of a roving inspection and he did not specify any particular document or correspondence and in the absence of any specific letters/correspondence, the Inquiring Authority rejected his request for making such roving perusal;

j. DEXs 4,5 and 7 have no evidentiary value since Bank is not a party to the same and in DEX 9 which is an extract of the Assembly proceedings, there was only a passing reference to the Tournament and there was no intent from the Education Minister for any budgetary provision for the tournament;

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k. when the petitioner allowed TODs and sought confirmation of the superiors, he had not brought to their knowledge that he had not obtained cover documents which would safeguard the interest of the bank and he had deliberately overlooked and ignored the legal implications while granting TODs;

l. the petitioner's reckless omissions and commissions had led the bank to lose its case before the Debts Recovery Tribunal and also the Debts Recovery Appellate Tribunal, Mumbai resulting in a loss of Rs.262.64 lakhs to the bank;

m. each of the charges levelled against him is independent and just because, the second charge was partially proved, the petitioner is estopped from contending that he is absolved from other charges;

n. the Inquiring Authority's findings that the petitioner should not have allowed the account to be overdrawn is perfectly justified as the account allowed to be opened by the petitioner is in respect of an Association which was never registered and thus not a legal entity;

o. the repeated allegations of the petitioner that all his actions were at the instance of the CMD is not tenable since he had miserably failed in his duty to follow the due procedure contemplated under the Manual of Instructions connected with the opening of an account;

p. his allegation that cheques were passed on various dates and therefore, he was not aware of as to how many cheques would go on any given date is nothing but mis-statement of facts and as a Branch Manager, it is not open to him to enable any customer having a current account to go on drawing amounts to any extent without any instructions;

q. his allegation that the bank did not take action against others is not correct as departmental action has been taken against the superiors alleged by him resulting in imposition of appropriate punishments on them;

r. the petitioner has been found guilty of the articles of charges and the misconduct committed by him falls under Regulation 3(1) of Indian Bank Officers' Employees (Conduct Regulations) read with Regulation 24 of the said Regulations; and

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s. the Disciplinary Authority has considered all the materials relating to the charge sheet issued to the petitioner and imposed the punishment on the petitioner by a well-considered order and the appellate authority also has given cogent reasons for rejecting the petitioner's appeal and so also the Reviewing Authority.

5. Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the petitioner, at the threshold, has contended that only based on the assurance from the CMD of the bank that he would ensure recovery of TODs from the Government which could make the repayment from its grants and other sources of income and upon his instructions and that of the Regional Manager / Zonal Manager, the petitioner had allowed TODs to be drawn in the Football Tournament a/c and as such, he cannot be singled out for the loss sustained by the bank, setting free all his superiors who had instructed him to do so and who had also confirmed such TODs granted.

6. On the point of procedural lapse in the process of conduct of enquiry, the learned Senior Counsel has vehemently contended that despite various explanations given by the petitioner to the bank, the petitioner was not allowed by the Enquiry Officer to scrutinise the vital records available at the Regional Office/Zonal Office/Head Office and his request was not acceded to by the bank by saying that those documents were not relevant and a perusal of those documents would have certainly enabled the petitioner to prove his innocence and brought to light, the culpability of his superiors and this action of the respondents in not allowing the petitioner to scrutinise the relevant documents amounts to violation of principles of natural justice. With regard to the first charge that the petitioner had opened the Football Tournament account in question even without any knowledge of the basic information such as constitution, members and by-laws of the Association, he has argued that the petitioner was under the obligation of carrying out the instructions of his superiors including the CMD of the bank and in this regard, he has pointed Regulation 3(3) of the Indian Bank Officer Employees' (Conduct) Regulations, 1976 which reads as under:

> "No office employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

In this context, it is his further contention that as per Clause 15.4 of Manual for Deposit of Accounts, accounts of funds which have no regular rules drawn up and which are held only temporarily may be allowed to be opened in the names of reliable persons of standing and status suffixed by words "Sports Fund", etc. and before opening of such accounts, the Manager must thoroughly satisfy himself with the bona fides of the respective parties and so also the circumstances under which the account is opened

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and in the instant case, since high ranking personalities such as the then Chief Minister of Tamil Nadu, the Chief Secretary to Government, the CMD of the Bank were involved and the CMD also recommended grant of TODs to the Football Tournament and it was also announced in the Assembly session that budgetary provision was to be made for the conduct of the tournament, the petitioner cannot be found fault with for not having known the basic information and especially, when his superiors had confirmed the grant of TODs granted at various intervals.

7. With regard to the third charge that the petitioner had not obtained cover documents, it is the contention of the learned Senior Counsel that even in the case of regular sanction limits, during routine follow-up process, the higher authorities would ask the Branch to confirm the documentation process and when no such issue was raised in this matter involving several lakhs of rupees, it naturally goes to show that the petitioner's superiors including the CMD of the Bank were aware that no documents were given as security by the account-holder and above all, since the CMD of the bank himself was actively involved in this transaction, there was no reason for the petitioner to doubt the bona fides of the account-holder. While attacking the allegation in the third charge that the bank was without recourse for recovery since cover documents were not obtained by the petitioner, the learned Senior Counsel has contended that while the Debts Recovery Tribunal had admitted the cheques drawn by the Tournament Committee through which the payments were made and which had not become time-barred, the respondents are estopped from alleging so and above all, had the Government grants and sufficient collection from the sponsors come in time, the issue of cover documents would not at all have arisen and the Enquiry Officer ought to have taken into consideration all these relevant factors before framing such a charge against the petitioner.

8. While attacking the fourth charge, the learned Senior Counsel has brought to the notice of this Court that the letters dated 15.02.1996 and 17.04.1996 from C.R. Viswanathan to the then Chief Minister and the then Chief Secretary respectively and the letters dated 14.08.1995, 09.09.1995 and 17.10.1995 from the Regional Office to the petitioner would throw light on the efforts taken by the petitioner in the process of recovery of TODs and the Enquiry Officer has not at all taken cognizance of these correspondences.

9. In support of his contentions, the learned Senior Counsel for the petitioner has relied on:

a. a judgment of the Supreme Court in the case of Reliance Airport Developers (P) Ltd. v. Airports Authority of India reported in (2006) 10 SCC 1:

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"57. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinise the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality" and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See CIT v. Mahindra and Mahindra Ltd.) The effect of several decisions on the question of jurisdiction have been summed up by Grahame Aldous and John Alder in their book Applications for Judicial Review, Law and Practice thus:

> "There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service 26 this is doubtful. Lords Diplock, Scaman and Roskili appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives

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relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."

63. The principles of judicial review of administrative action were further summarised in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows: (All ER p. 950 h - i)

> "Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognised in the administrative law of several of our fellow members of the European Economic Community;"

64. Lord Diplock explained "irrationality" as follows: (All ER p. 951 a - b)

> "By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

65. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of

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"proportionality" into administrative law was left for the future.

66. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar.)

67. Wednesbury principles of reasonableness to which reference has been made in almost all the decisions referred to hereinabove is contained in Wednesbury case. In that case Lord Greene, M.R. has held that a decision of a public authority will be liable to be quashed in judicial review proceeding where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have arrived at it.

68. The standards of judicial review in terms of Wednesbury are now considered to be "traditional" in England in contrast to higher standards under the common law of human rights. Lord Cooke in R. v. Secy. of State for the Home Deptt., ex parte Daly, observed: (All ER p. 447, para 32)

> "And I think that the day will come when it will be more widely recognised that Wednesbury case 29 was an unfortunately retrogressive decision in English administrative law, insofar as it suggested that there are degrees of unreasonableness and that only a very extreme degree can bring an administrative decision within the legitimate scope of judicial invalidation. The depth of judicial review and the deference due to administrative discretion vary with the subject-matter. It may well be, however, that the law can never be satisfied in any administrative field merely by a finding that the decision under review is not capricious or absurd."

102. H.W.R. Wade and C.F. Forsyth in their book Administrative Law, 7th Edn., (1994) discuss the subject regarding the jurisdiction of superior courts over subordinate courts and tribunals under the head "Jurisdiction over fact and law" in Chapter 9, pp. 284-320. The decisions before Anisminic 2 and those in the post- Anisminic 42 period have been discussed in detail. At pp. 319-20, the authors give the Summary of Rules thus:

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"Jurisdiction over fact and law: summary

At the end of a chapter which is top-heavy with obsolescent material it may be useful to summarise the position as shortly as possible. The overall picture is of an expanding system struggling to free itself from the trammels of classical doctrines laid down in the past. It is not safe to say that the classical doctrines are wholly obsolete and that the broad and simple principles of review, which clearly now commend themselves to the judiciary, will entirely supplant them. A summary can therefore only state the long-established rules together with the simpler and broader rules which have now superseded them, much for the benefit of the law. Together they are as follows:

Errors of fact

Old rule: The court would quash only if the erroneous fact was jurisdictional.
New rule: The court will quash if an erroneous and decisive fact was

(a) jurisdictional;
(b) found on the basis of no evidence; or
(c) wrong, misunderstood or ignored.

Errors of law

Old rule: The court would quash only if the error was

(a) jurisdictional; or
(b) on the face of the record.

New rule: The court will quash for any decisive error, because all errors of law are now jurisdictional." (emphasis supplied)

The above position was highlighted by this Court in Mafatlal Industries Ltd. v. Union of India 57 , SCC pp. 736-37, para 337. "

b. another judgment of the Supreme Court reported in (2003) 9 SCC 480 in the matter of Kailash Nath Gupta v. Enquiry Officer (para 11)

"11. In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the

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punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

c. yet another judgment of the Supreme Court reported in (1996) 11 SCC 498 in the matter of Dy. Inspector General of Police v. K.S. Swaminathan, (1996) 11 SCC 498 (para 4)

"4. It is settled law by a catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the tribunal or the court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge-sheet supplied are required to be looked into by the court or the tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo. In similar circumstances, in respect of other persons involved in the same transactions, this Court in appeals arising out of SLPs (C) Nos. 19453-63 of 1995 had on 9-2-1996 allowed the appeals, set aside the order passed by the Tribunal and remitted the matter holding that:

> "This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such matters."

d. a judgment of the High Court of Karnataka reported in AIR 1964 Mysore 221 (V 51 C 57) (para 18 to 20)

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"18. It is in my opinion plain that the only charge into which a Board of Enquiry appointed under Rule II(4) of the Mysore Civil Services (Classifications, Control and appeal) Rules, 1957, may make an enquiry would be the charge framed under Rule II(2) by the disciplinary authority or by the authority specially empowered in that behalf. It is not within the competence of the Board of Enquiry to frame fresh charges when it is appointed to enquire into a charge already framed under sub-rule(2). But, if it nevertheless proceeds to do so, it would be clearly acting without the authority of law and any finding recorded by the Board of Enquiry into a charge framed by it not already included in the charge framed under sub-rule (2) would be a finding which has no existence in the eye of law and cannot properly form the foundation for the imposition of a punishment on the delinquent Government servant.

19. This is not all that has to be said about this matter. In paragraph 16(c) of the report of the Board of Enquiry, it recorded a finding that the Sub-Engineer was guilty of certain charges which had not been framed against him by anyone at any stage and not even by the Board of Enquiry. This is what it stated:

> "He has failed to suggest the deduction of the value of materials and has on one occasion specially recommended the passing of an item deferred by the Assistant Engineer. Hence he cannot be considered to be innocent in any measure. According to his own defence, he was making use of the vehicle of a contractor in his journeys to and from Kyathedevaragudi. This indicates that he did not scruple to place himself under the obligation of contractors. He is, therefore, responsible for all bad works, i.e.
>
> (A) (1) for use of bad or underburnt bricks
> (2) admixture of inferior lime and sand
> (3) weak mixture of cement concrete
> (4) inadequate reinforcement in RCC work
> (5) casting R.c. joists rectangular
> (6) bad spongy weathering coat over roof
> (7) providing inadequate bearing or joists on walls and
> (8) bad flooring work.

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(B) He is also responsible for classifying verandah lintels under the head "Beams".

(C) he is responsible for submitting bills for bad work done;

(D) In submitting bills, he should have noted the issue of materials on works which he has neglected thereby causing loss to the Government."

It is manifest that not all the sub-items under the heading (A) were within the charge framed by the Board of Enquiry and much less in the charge framed by the Government. It is equally clear that none of the maters referred to in items (B) (C) and (D) was included either in the charge framed by the Board of Enquiry or in the charge framed by the Government, and, that this is so, is not disputed by Mr. Government Pleader.

20. The position therefore with respect to the Sub-Engineer is that the Board of Enquiry exceeded its power in first framing charges against him in addition to those which had been framed by the Government which was entirely beyond its competence; and again in finding him guilty of charges which he had no opportunity to meet at any stage and which were never framed even by the Board of Enquiry at any material point of time. This is therefore a case in which the impugned order of dismissal suffers from more than one defect, preceded as it was by the transgression of the provisions of Article 3 II of the Constitution, and the contravention of the clear provisions of Rule II(4) of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. A punishment imposed in that way cannot, it is clear, be defended."

e. a judgment of the Gauhati High Court reported in 1995 (6) SLR 557 in the matter of Rajdeo Rai vs. Assam Administrative Tribunal, Gauhati and others (para 17):

"A bare perusal of the impugned judgment dated 19.11.1988 passed by the Tribunal will show that the Tribunal committed grave error lf law inasmuch as it failed to appreciate that the appeal and the review petition filed by the petitioner to the Government of Assam against the order of dismissal having been entertained and dismissal, the Chairman of the Tribunal who was the Chief Secretary to the Government of Assam and had occasion in that capacity to deal with the petitioner's case and as such, he was biased against the petitioner and should not have decided

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the appeal of the petitioner. The Tribunal committed manifest error of law in framing separate charge though the earlier charge was vague on the face of it. Such a vague charge was not maintainable in view of Rule 9(2) of the Assam Services (Discipline and Appeal) Rules, 1964 which clearly provides for framing definite charge. The Tribunal after the acquittal of the petitioner by the Sessions Judge could not have come to a different conclusion so as to inflict the extreme penalty of removal from service upon the petitioner. The Tribunal even after holding "it is true that to a total stranger reading this charge and accompanied statement of allegations, the matter may appear to be impressive and vague, "came to the erroneous conclusion on extraneous consideration such as the petitioner participate in the criminal proceeding and after elapse of time, the petitioner allegedly got the expert legal advice both in criminal and departmental proceedings, etc. which were not borne out of records. The Tribunal also failed to appreciate that the witnesses were not examined in presence of the petitioner, his signature were not obtained in the deposition and the enquiry officer himself assumed the role of the presenting officer and he himself cross-examined the witnesses. This aspect of the matter has been simply brushed aside by the Tribunal holding that signature of the petitioner were not required to be taken in the deposition and the proceedings. On this score alone, the judgment of the Tribunal is liable to be set aside. The Tribunal also misread the verdict given by the Apex Court in Bhagatram case, AIR 1983 SC 454. The Tribunal also committed manifest error of law by repeatedly observing that the petitioner had to his credit expert legal advice with both in criminal and departmental proceedings which is based on inference only and not on face. The Tribunal has come to altogether a different finding having no nexus with the original charge no.2 "on which the petitioner was acquitted by the Sessions Judge" and erroneously held that "our findings have a strong nexus with the original charge and are not extraneous. For these reasons, we hold that charge no.2 has been proved against the appellant to the extent of our finding noted above." Thus apparently the Tribunal has brought into a new charge to the original charge of the defence of which the petitioner was not afforded with any opportunity whatsoever. By such framing of a new charge altogether different from the original charge, the Tribunal committed grave error of law to give definiteness to a charge otherwise vague on its mere perusal and violated the principles of natural justice."

9. Mr. G. Venkataraman, learned counsel for the respondents, per contra, while countering the contention raised by the learned Senior Counsel for the petitioner that the petitioner was not allowed to examine the documents, has argued that the petitioner, along with his Defence Assistant, was given ample opportunity to inspect the documents at the

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Kotturpuram Branch Office which were relied on by the bank Management and the petitioner also had confirmed inspection of documents and since the petitioner failed to specify as to which document he wanted to examine at the Regional Office / Zonal Office / Head Office, his request for roving inspection was rejected. As regards the petitioner's apprehension that the officers would not depose truthfully and that was the reason for non-examination of any witness, the learned counsel for the respondents has remarked that the petitioner's apprehension is only irrelevant and self-serving.

10. The next contention put forward by the learned counsel for the respondents is that though the petitioner claimed that C.R. Viswanathan is the Organising Secretary of the Association, he has not shown any proof to that effect nor the Constitution or by-laws of the Association, thus deviating from the procedure contemplated in this regard.

11. With regard to the reliance placed by the learned Senior Counsel for the petitioner on DEXs 5 and 7, letters sent by C.R. Viswanathan to the then Secretary and the then Chief Minister respectively, the learned counsel for the respondents has raised a point that those exhibits do not have any evidentiary value since they do not meet with any acceptance or approval of the Government and that above all, the bank is not a party in the same.

12. Assailing the contention of the learned Senior Counsel that the grant of TODs was confirmed by the petitioner's superiors, the learned counsel for the respondents has pointed out that the petitioner, while seeking confirmation from his superiors, had not disclosed the fact that he had not obtained cover documents and his superiors would have only confirmed grant of TODs on the assumption that cover documents would have been secured by the petitioner and thus, when the petitioner had skipped from his primary responsibility of complying with the documentation facilities for the lending transactions of the Branch, he cannot escape from the clutches by saying that his superiors were fully aware of grant of TODs in question. In reply to the explanation given by the learned Senior Counsel for the petitioner that the Debts Recovery Tribunal had admitted the cheques drawn by the Tournament Committee and that the bank was not without any recourse for recovering its liability, the learned counsel for the respondents brought to the attention of this Court that the former's explanation cannot be sustained since the bank lost its case before the Debts Recovery Tribunal and also before the Debts Recovery Appellate Tribunal even before the commencement of regular enquiry.

13. The learned counsel for the respondents has further contended that the learned Senior Counsel for the petitioner cannot say that the petitioner has been singled out for the lapses of his superiors since departmental action had been taken against them resulting in imposition of appropriate punishments on them. He has assailed the contention made by

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the learned Senior Counsel for the petitioner that in the extract of the Assembly proceedings, there is no mention about the budgetary allocation for the Football Tournament and it was merely announced in the Assembly session that an international football tournament in the name of the then Chief Minister is to be held in Jawarharlal Nehur Indoor Stadium. While concluding his arguments, he has contended that the orders passed by the respondents are very much speaking in nature and are made after a careful analysis of all the materials on record and the entire facts and circumstances of the case and as such, they do not warrant any sort of interference under Article 226 of the Constitution of India.

14. The learned counsel for the respondents in support his contentions has placed reliance on the following judgments of the Supreme Court:

a (1999) 1 SCC 759 in the matter of Apparel Export Promotion Council v. A.K. Chopra: (paras 17 to 20)

> "17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority.
>
> 18. It is useful to note the following observations of this Court in Union of India v. Sardar Bahadur : (SCC p. 623, para 15)
>
> > "Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court, exercising its jurisdiction under Article 226, to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held, the question of adequacy or reliability of the evidence cannot be canvassed before the High Court."
>
> 19. After a detailed review of the law on the subject, this Court, while dealing with the jurisdiction of the High Court or Tribunal to interfere with the disciplinary matters and punishment in Union of India v. Parma Nanda opined: (SCC p. 189, para 27)

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" 27 . We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of na tural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

20. In B.C. Chaturvedi v. Union of India, this Court opined: (SCC p. 759, para 13)

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

Further it was held: (SCC p. 762, para 18)

" 18 . A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would

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appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

b. (2003) 3 SCC 583 in the matter of Lalit Popli v. Canara Bank (para 18)

"18. In B.C. Chaturvedi v. Union of India the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding."

c. (2005) 1 SCC 13 in the matter of Ganesh Santa Ram Sirur v. State Bank of India: (paras 34 and 35)

"34. The bank manager/officer and employees of any bank, nationalised/or non-nationalised, are expected to act and discharge their functions in accordance with the rules and regulations of the bank. Acting beyond one's authority is by itself a breach of discipline and trust and a misconduct. In the instant case Charge 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant Rule which prohibits the bank manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant did not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realised the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decision. Rule 34 (3)(1) is a rule of integrity and, therefore, as rightly pointed out by Mr Salve, the respondent Bank cannot afford to have the appellant as bank manager. The punishment of removal awarded by the appellate authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC v. Hoti Lal 13 wherein this Court has held as under: (SCC p. 614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in

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financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

35. We entirely agree with the above observations made in the above judgment."

d. (1996) 9 SCC 69 in the matter of Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik:

"7. It may be mentioned that in the memorandum of charges, the aforesaid two regulations are said to have been violated by the respondent. Regulation 3 requires every officer/employee of the bank to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. It requires the officer/employee to maintain good conduct and discipline and to act to the best of his judgment in performance of his official duties or in exercise of the powers conferred upon him. Breach of Regulation 3 is 'misconduct' within the meaning of Regulation 24. The findings of the Inquiry Officer which have been accepted by the disciplinary authority, and which have not been disturbed by the High Court, clearly show that in a number of instances the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. True, it is t hat in some cases, no loss has resulted from such acts. It is also true that in some other instances such acts have yielded profit to the Bank but it is equally true that in some other instances, the funds of the Bank have been placed in jeopardy; the advances have become sticky and irrecoverable. It is not a single act; it is a course of action spreading over a sufficiently long period and involving a large number of transactions. In the case of a bank—for that matter, in the case of any other organisation — every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the bank would become chaotic and unmanageable. Each officer of the bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organisation, more particularly, a bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by

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ulterior motives or by extraneous considerations. The very act of acting beyond authority — that too a course of conduct spread over a sufficiently long period and involving innumerable instances — is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organisation and more particularly, a bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and overdrawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit — huge profit, as the High Court characterises it — they are no less blameworthy. It is wrong to characterise them as errors of judgment. It is not suggested that the respondent being a Class I Officer was not aware of the limits of his authority or of his powers. Indeed, Charge 9, which has been held established in full is to the effect that in spite of instructions by the Regional Office to stop such practice, the respondent continued to indulge in such acts. The Inquiry Officer has recorded a clear finding that the respondent did flout the said instructions and has thereby committed an act of disobedience of lawful orders. Similarly, Charge 8, which has also been established in full is to the effect that in spite of reminders, the respondent did not submit "Control Returns" to the Regional Office. We fail to understand how could all this be characterised as errors of judgment and not as misconduct as defined by the Regulations. We are of the opinion that the High Court has committed a clear error in holding that the aforesaid conduct of the respondent does not amount to misconduct or that it does not constitute violation of Regulations 3 and 24. "

e. (1995) 6 SCC 749 in the matter of B.C. Chaturvedi v. Union of India: (paras 13, 14 and 18)

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of

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punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel, this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

14. In Union of India v. S.L. Abbas when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State Bank of India v. Samarendra Kishore Endow 8 a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

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f. (2003) 4 SCC 364 in the matter of Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar (paras 11 and 14)

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.
>
> 14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."

g. (1997) 4 SCC 565 in the matter of Tara Chand Vyas v. Chairman & Disciplinary Authority:

> "2. Economic empowerment is a fundamental right of the weaker sections of the people, in particular the Scheduled Castes and Scheduled Tribes, ensured under Article 46 as a part of social and economic justice envisaged in the Preamble of the Constitution; the State is enjoined to promote their welfare effectuated under Article 38. Distribution of material resources

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to elongate that purpose envisaged in Article 39(b) is the means for the development of the weaker sections. The banking business and services were nationalised to achieve the above objects. The nationalised banks, therefore, are the prime sources and pillars for establishment of socio-economic justice for the weaker sections. The employees and officers working in the banks are not merely the trustees of the society, but also bear responsibility and owe duty to the society for effectuation of socio-economic empowerment. Their acts and conduct should be in discharge of that constitutional objective and if they derelict in the performance of their duty, it impinges upon the enforcement of the constitutional philosophy, objective and the goals under the rule of law. Corruption has taken deep roots among the sections of the society and the employees holding public office or responsibility equally became amenable to corrupt conduct in the discharge of their official duty for illegal gratification. The banking business and services are also vitally affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore, be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelise the use of the public funds, the live wire for effectuation of socio-economic justice in order to achieve the constitutional goals set down in the Preamble and to see that the corrupt conduct of the officers does not degenerate the efficiency of service leading to denationalisation of the banking system. What is more, the nationalisation of the banking service was done in the public interest. Every employee/officer in the bank should strive to see that banking operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation. Any conduct that damages, destroys, defeats or tends to defeat the said purposes resultantly defeats or tends to defeat the constitutional objectives which can be meted out with disciplinary action in accordance with rules lest rectitude in public service is lost and service becomes a means and source of unjust enrichment at the cost of the society. "

h. (2006) 3 SCC 150 in the matter of Syndicate Bank v. Venkatesh Gururao Kurati:

"11. It was the specific case of the appellants that the documents sought by the delinquent officer which were relevant for the purpose of enquiry and which were part of the charges were supplied to the delinquent officer, but the documents which were not supplied to the delinquent officer were those on

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which the prosecution either did not rely or which did not form part of the charges.

17. In the case of Chandrama Tewari v. Union of India, at SCC p. 521, para 4 it was held by this Court:

> "However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer."

18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

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i (1999) 5 SCC 762 in the matter of Bank of India v. Degala Suryanarayana:

"11. Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held:

> "The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

15. Further reliance has been placed by the counsel for the respondents on a judgment of this Court reported in 2005 (5) CTC 245 in the case of Indian Bank represented by its Chairman and Managing Director vs. S. Madhavan:

"12. In the Disciplinary Authority-cum-Regional Manager and Others v. Nikunja Bihari Patnaik, JT 1996 (4) SC 457, the respondent allowed overdrafts or passed cheques involving substantial amounts beyond his authority. Even though such acts did not result in loss to the bank and in some cases even yielded some profits to the bank, it was held by the Supreme Court that as they were done beyond the authority of the employee it was an act in breach of discipline, and hence he was liable to be punished.

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13. In Ganesh Santa Ram Sirur v. State Bank of India and another, JT 2004 (9) SC 620, the Supreme Court folowed its own earlier decisions in Regional Manager, U.P.S.R.T.C., Etawah & Others v. Hoti Lai and another, JT 2003 (2) SC 27, wherein it was observed:

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable."

16. I have given careful consideration to the submissions made by the learned counsel on either side and also the judgments relied on by them in support of their arguments. I have also perused the material documents placed before this Court.

17. It is seen that the petitioner joined the services of the respondent bank in the year 1974 and was working as Manager of Kotturpuram Branch from 08.07.1993 to 31.03.1996. During 1994, he was informed over telephone by the then CMD that one C.R. Viswanathan would get in touch with him regarding an International Women's Football Tournament to be held in Chennai in the name of the then Chief Minister J. Jayalalitha. Even in an earlier occasion, when the petitioner was the Manager at the Clock Tower Branch, Chennai, the said C.R. Viswanathan who was appointed by the Tamil Nadu Government as a Member and Coordinator of the Tamil Nadu Sports Stadia Society along with the CMD of the bank and the then Chief Minister, approached him seeking TODs. The Society undertook construction of Jawaharlal Nehru Football Stadium at the cost of Rs.40 crores for which the petitioner, in the capacity of Branch Manager, on the instruction of the CMD of the bank, granted TODs to the tune of Rs.20 crores and this sum was returned by the Government within the time prescribed. With this background, the petitioner was instructed by the CMD to allow TODs to the tune of Rs.150 lakhs and report the same to the Regional Manager and Zonal Manager for confirmation. Accordingly, C.R. Viswanathan who was the Organising Secretary of the Football Tournament opened an account in the name of the Football Tournament. The CMD also had informed the petitioner that the facility of allowing TODs was purely a temporary arrangement which would be adjusted by Government grants and other collections. The CMD further informed the petitioner that he would personally monitor such collections. When this was the position, the petitioner allowed TODs with the confidence that the CMD was involved and the earlier TOD granted

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was repaid as per schedule and reported the grant of TODs to the Regional Manager, Zonal Manager and the Chairman and Managing Director and also obtained their confirmation.

18. It is further seen that the TODs were originally meant to be only for a period of four months. Unfortunately, as expected, amounts which ought to have come in by way of Government grants and advertisements did not materialise. At that stage, the petitioner wanted to meet the then Chief Minister/the Chief Secretary/any other officials of the Government for the purpose of recovery. But, the CMD stood in the way of the petitioner meeting them stating that the matter was dealt at the top level and to the petitioner's anxiety regarding the failure of the commitment to repay, he assured him of contacting the top officials of the Government to recover the TODs and not to embarrass C.R. Viswanathan.

19. From a clear understanding of the case, it appears that during 1994, in the State of Tamil Nadu, J. Jayalalitha was the Chief Minister, M. Gopalakrishnan was the CMD of the respondent bank and N. Haribaskar was the Chief Secretary of the State and during this relevant period, the petitioner who was the Branch Manager of the Kotturpuram Branch, has allowed TODs towards the Football Tournament based on the instructions of his superiors. It is also seen that he received a letter dated 15.04.1996 from the Chief Manager, Vigilance of the respondent bank stating that during his tenure as Branch Manager of the Kotturpuram Branch from 08.07.1993 to 31.03.1996, he had committed serious irregularities in respect of appraisal, disbursal and follow up of credit limits sanctioned to the Football Tournament Account. This letter further enumerated the charge of having allowed huge TODs without authority to an Association which had no record without verifying its constitution, etc. and that he did not care to pursue the matter by which action the bank was facing difficulties in recovering the liability of Rs.194 lakhs as on 14.12.1996. In reply, the petitioner sent his explanation denying the charges by explaining the circumstances under which the Football Tournament A/c was opened and how the TODs came to be allowed. In his explanation, he also stated that he had obtained confirmation for the facilities allowed and that the letter dated 09.11.1994 from the Zonal Manager to the CMD contains the notings of the CMD himself. He further stated in his explanation that he had taken all efforts in regard to follow up action and that documents were available to prove his stand. Above all, it was further specified in his explanation that the Football Tournament Account was referred to the Kotturpuram Branch by his superiors, viz., the Assistant General Manager, Regional Office, Madras (South), the Zonal Manager and the then CMD and on that basis, C.R. Viswanathan met him and stated that he was to be designated as Organising Secretary and the Working Committee was under formation which included high dignitaries like the Chief Secretary, Finance Secretary, Education Secretary, Director General of Police and several others and he was also informed by C.R.

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Viswanathan that this is an one-time international affair and there were no separate constitution, by-laws, etc.

20. However, not being satisfied with the petitioner's explanation, he was issued with a charge sheet dated 18.03.1997 enumerating four charges, that (i) he had allowed huge TODs without verifying basic information of the borrower Association,(ii) he had allowed several overdrafts for which he had no powers and that he had not obtained confirmation for the same and thus misused his official position; (iii) though he permitted huge overdrafts, he had not cared to take documents and thus rendered the bank without recourse to proceed for recovery; and (iv) he had not taken follow up action in getting the documents or in recovery of TODs granted.

21. To the above charges, the petitioner submitted his explanation on 25.04.1997 reiterating his earlier explanation and further submitted that all his actions were based on the instruction of his superiors and that every TOD which was allowed was had the confirmation from his superiors. He also enclosed ten documents along his explanation and submitted that his actions were not based on mere telephonic instruction from the CMD. Even on this occasion, the respondent bank was not satisfied with the petitioner's explanation and the documents annexed to it and consequently, a departmental enquiry was ordered.

22. The petitioner participated in the departmental enquiry and he was represented by his Defence Assistant. While on the side of the Management of the respondent bank, 40 documents were marked through its only witness who was a Senior Manager, the petitioner was permitted to mark 31 documents and he did not choose to examine any witness on his behalf since he apprehended that his superior officers would not be in a position to depose truthfully as their role in this transaction would stand exposed. The petitioner specifically averred that he had serious objections to the manner in which the enquiry proceeded as he was denied the opportunity to scrutinize the files and documents at the Regional Office/Zonal Office/Head Office. This scrutiny of files and documents sought by the petitioner appears to be relevant and crucial to know the extent of involvement of his superiors in this transaction from the very beginning and whether the petitioner was only carrying out the instructions of his superiors in this regard. According to the petitioner, the action of the respondent bank in not permitting him to scrutinize the relevant records relating to the transaction which were available at the Regional Office/Zonal Office/Head Office is totally opposed to the principles of natural justice and fair play and this has vitiated the entire disciplinary proceedings.

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23. In his written brief, the petitioner requested the Enquiry Officer to angulate the situation leading to the case, particularly taking into consideration the fact that he did in good faith whatever his superiors asked him to do and more particularly, the statement of the Presenting Officer on the side of the respondent bank who held that the second charge was only partly proved as the TODs which were allowed had the approval of the Assistant General Manager/Zonal Manager/Chairman and Managing Director. However, the Enquiry Officer submitted a report finding that the petitioner is guilty of charge nos.1,3 and 4, fully accepting the case of the Presenting Officer and in respect of charge no.2, the petitioner was found guilty in part.

24. The petitioner's consistent plea in this regard is that the charges leveled against him cannot be separated, especially when they are based on the same set of evidence and particularly taking into account, the circumstances under which the TODs were allowed. His further plea is that considering the background of this transaction and the huge amount involved in it, he cannot be singled out and penalised for allowing TODs which had the confirmation from the Assistant General Manager, Regional Manager, Zonal Manager and the CMD and that he has not been given opportunity at the earliest point of time to scrutinise the various documents to establish their involvement.

25. In this connection, the Enquiry Officer has stated in his report that the Football Tournament A/c of an unregistered society should not have been allowed to be overdrawn even temporarily and as such, the petitioner has violated the guidelines in the Manual of Instructions relating to opening of accounts for Associations, Committees, Clubs and Societies. But, according to the petitioner, even as per the said Manual, for one time events such as the present case, the usual practice of registration of a society is not applicable. The petitioner was asked to submit his reply to the findings of the Enquiry Officer in response to which he insisted and reiterated his earlier stand explaining every circumstance and evidence thereby replying to every charge which is proved as well as not proved. The petitioner also stated that he allowed TODs on the oral permission and instruction of the Assistant General Manager and was seeking confirmation of the same. But, he did not receive a single letter in reply to any of these above mentioned letters refuting the oral instructions of the Assistant General Manager. Therefore, he sought the permission of the respondent bank to inspect the files and documents at the Regional Office, Zonal Office and CMD Office. However, the Disciplinary Authority proceeded further and concurred with the findings of the Enquiry Officer and imposed the punishment of compulsory retirement on the petitioner holding, for the first time, that opening the account without cover documents and allowing TODs cannot be accepted as there was

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no conclusive evidence regarding the directions and instructions of the CMD and other superiors. Against this order of the Disciplinary Authority who is arrayed in this case as the third respondent, the petitioner preferred an appeal before the second respondent on 19.01.2000 which was rejected on 29.02.2000. Thereafter, a review was preferred by the petitioner before the first respondent on 17.04.2000 and that also came to be rejected on 29.07.2000. Challenging these orders i.e. the orders of the Disciplinary Authority, Appellate Authority and the Reviewing Authority, the present writ petition has been filed.

26. It is mainly contended on the side of the petitioner that the Disciplinary Authority failed to see that the Enquiry Officer ought not to have denied the petitioner the opportunity to peruse the files connected to the transaction which were available in the office of the Assistant General Manager, Regional Manager, Zonal Manager and the CMD. The reasoning given by the Enquiry Officer in not providing this opportunity to the petitioner is that these files are not relevant to the case. Of all the documents, the most important one relied on by the petitioner claiming that the notings of the CMD himself would be there is DEX 13 which is a letter dated 09.01.1994 from the Zonal Manager to the CMD seeking confirmation of grant of TOD. It is also the case of the petitioner that similar notings of the CMD and his other superiors would be found in the files connected with the Football Tournament A/c. The vehement contention put forth by the learned Senior Counsel appearing for the petitioner in this regard is that while his superiors were repeatedly confirming his actions in allowing the TODs, their notings and queries would be made in their respective files and had these documents been allowed to be examined by the petitioner, the knowledge and concurrence of the petitioner's superiors in this transaction from the very beginning would have come to light. There is certainly a force found in this argument of the learned Senior Counsel appearing for the petitioner. I am of such a view because the bank authorities would have negatived the petitioner’s request for examination of documents and files in view of their fear that they would get into trouble if they accede to his request. If that is not so, they need not have rejected the his request saying that the documents sought by him are not relevant for his case. In other words, the bank could have very well granted permission to the petitioner to examine the documents which he wanted to examine and by doing so, it is certain that the bank would not have lost anything. Rather, the stand of the bank in negativing the petitioner’s request for examination of files and documents giving a flimsy, vague and unacceptable reasoning that they are not relevant, does not seem to be convincing. In this background, it is to be seen whether the action of the petitioner in obedience to the instructions of his superiors including that of the CMD, has been in conformity with the guidelines framed by the respondent bank in its Manual for deposit of accounts. The reason assigned by the petitioner for not obtaining cover documents is that TOD was temporary in nature and the Football Tournament was an one time event. In this context, it is relevant to refer to Clause

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15.4 of Manual for deposit of accounts which reads as under:

> "Accounts of funds which have no regular rules drawn up and are held only temporarily may be allowed to be opened in individual names of reliable persons of standing and status (with the additional words) such as "Sports Fund", etc. However, before allowing opening of such accounts, the Manager must be thoroughly satisfied with the bona fides of the party and the circumstances under which such an Account is being opened."

27. It is strenuously contended by the learned Senior Counsel appearing for the petitioner that the petitioner having been instructed by his superiors, viz., the Regional Manager, Zonal Manager and particularly the CMD himself and the person who contacted the petitioner was directed by the Chief Secretary of the State, the petitioner has no reason to doubt the bona fides of the account because of the persons involved and the concurrence of his superiors and this Court finds no hesitation in accepting this contention put forward by the learned Senior Counsel appearing for the petitioner.

28. The next point arising for consideration in this case is whether the charges framed against the petitioner that though he permitted huge overdrafts, he had not cared to take documents and thus rendered the bank without recourse to proceed for recovery and he had not taken follow up action in getting the documents or in recovery of TODs granted, are correct. A circumspect analysis would reveal that from the very beginning, i.e. opening of the Football Tournament A/c, the petitioner has acted as per the instructions of his superiors who were fully aware of the fact that the cover documents were not taken in this transaction. Even in the case of regular sanction limits, the Regional Manager/Zonal Manager, during routine follow up, are supposed to ask the Branch to confirm whether there is proper documentation. In this transaction where the amount involved runs to several lakhs of rupees, this question was not raised until months after the transaction. This was because the petitioner and his superiors had the impression that the money given for this temporary loan would be recovered from Government grants, donations, sponsors, etc. especially when the CMD himself was concerned with the transaction and as such, there was no reason for the petitioner to doubt the bona fides of any of the persons involved. Therefore, to prove his innocence, he requested the respondent bank to permit him to examine the files and documents containing the notings and queries made by the CMD and other superiors involved in this transaction and as already stated, the petitioner was deprived of this opportunity.

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29. The consistent plea of the petitioner appears that he sanctioned TODs only on instruction of his superiors especially the CMD. In this context, Regulation 3(3) of the Indian Bank Officer Employees' (Conduct) Regulations, 1976 has been pointed out by the learned Senior Counsel for the petitioner which reads as under:

> "No office employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior."

30. A plain reading of the above provision makes it abundantly clear that the petitioner, who is also an office employee in the position of a Branch Manager, has to act as per the direction of his superiors and accordingly, he has acted as per the directions of the superiors and nowhere on the side of the respondent bank, it has been stated that he has not acted as per the directions of the superiors. Of course, the petitioner has not placed any evidence to show that he had acted as per the instructions of his superiors because of the fact that everything was available only in the Regional Office, Zonal Office and the office of the CMD. Undoubtedly, had the petitioner been permitted to scrutinize those files and documents, he would have had the opportunity to prove his innocence. In that view of the matter, there is no other option but to conclude that he had acted only in deference to the directions of the superiors. On the contrary, had the petitioner not carried out the instructions of his superiors, no wonder, he would have been very well charge sheeted on the ground of his disobedience or insubordination. In the case of the petitioner, he was directed by his superiors including the CMD to allow TODs for the purpose of conduct of an International Football Tournament in which several high profile dignitaries like the Chief Secretary and Finance Secretary of the State and the CMD of the respondent bank were actively involved and he, holding the post of a Manager, had to necessarily act on the instructions of his superiors who had, then and there, confirmed grant of TODs. Looked at from this angle, the Regulation referred to above, the irrefutable circumstantial and documentary evidence and the overall aspects of the matter clearly establish the involvement of the petitioner's superiors under whose direction, he has acted upon and therefore, he is entitled to the protection and guarantee mentioned in the Regulation. It is also noteworthy that the aforesaid Regulation has been meticulously incorporated in the interest of the lower level officers with the approval of the Government of India and the Reserve Bank of India, considering that they are pressurised by their superiors in banking institutions in the matter of grant of loans or overdrafts.

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31. An analytical view is possible in this case by taking proper angulation and background circumstances leading to the action initiated against the petitioner. In the enquiry, as already referred to above, the petitioner made a consistent plea with regard to the notings and queries of his superiors in DEX 6, 7 and 13 and sought scrutiny of the same and the same plea was also put before the Disciplinary Authority. No doubt, non-supply of documents on which the Enquiry Officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the Enquiry Officer to arrive at his conclusion, which would cause prejudice being violative of principles of natural justice. Therefore, the document sought by the delinquent officer which are relevant for the purpose of enquiry and which were part of the charges and those documents which are not supplied to the delinquent officer but were those on which the prosecution relied for the proper conclusion, have to be supplied. If such documents are not supplied, that will have a great prejudice and be a detriment to the interest of the officer concerned when the demand is used in recording finding of the charges and on which the Enquiry Officer arrived at a conclusion, then, it is the bounden duty and obligation on the part of the authority to supply the necessary material and relevant documents to the delinquent officer as otherwise it would amount to violation of principles of natural justice. In the given facts and circumstances of the case, to establish the allegation of principles of natural justice, the delinquent officer has to establish that prejudice has been caused to him for non-observance of principles of natural justice and this proposition has also been settled in Syndicate Bank case and Chandrama Tewari case referred to above. However, on a perusal of the orders of the Disciplinary authority, it appears that he has not acted in a manner known to law to give due consideration by applying his mind to find out as to whether those documents and files sought by the petitioner for scrutiny are relevant for the purpose and to determine whether the charges are proved or not. In other words, it should be said that he has shut his eyes as far as the procedural aspect in the conduct of enquiry is concerned and has not taken note of the denial of opportunity and absence of fair play, thereby merely confirming the findings of the Enquiry Officer before imposing the punishment. In such view of the matter, I am of the firm view that the enquiry has to be necessarily redone by providing the documents sought by the petitioner to prove his innocence.

32. In the above context, it is worth referring to the Constitution Bench judgment of the Supreme Court reported in 1991 Supp (1) SC 600 in the case of Delhi Transport corporation vs. D.T.C. Mazdoor Congress and others wherein it was held in paragraph 316 as under:

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> "Thus, it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen, vesting of discretion is no wrong provided it is exercised purposively, judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide off the mark would breed arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of an employee, must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Article 21 of the Constitution. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words, an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void."

33. From an interesting reading of the above, it can be inferred that absolute power is not conferred on the employer only to dismiss a permanent employee because it would amount to antithesis to justness or fair treatment. Of course, it should not be mis-construed that the delinquent employees should not at all be dismissed by the employers. What is to be noted is that to come to a conclusion that an employee has done great harm to the organization, the enquiry against such a person should be conducted in a just, reasonable and fair procedure.

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34. From an analytical view of the facts and circumstances and the proposition settled by the Supreme Court as above, I am of the considered view that the ordained principle of conducting an enquiry by affording a reasonable opportunity to the petitioner has not at all been followed by the Enquiry Officer and this lapse on his part has not been taken into consideration by the Disciplinary Authority, thus, giving a go-by to the principles of natural justice. An ordained principle which could be fundamental in conducting a proper enquiry is affording a reasonable opportunity and following the principles of natural justice. At least, the Appellate or the Reviewing Authority also could have strained to some extent to look into this procedural irregularity. On the contrary, they have merely endorsed the stand taken by the Disciplinary Authority in a mechanical manner by confirming the punishment of compulsory retirement from service imposed by him on the petitioner and as such, their orders also suffer from legal infirmity. In my opinion, the stand of the respondent bank in not considering the consistent plea made by the petitioner to scrutinize the files and documents is contrary to law, unreasonable, unfair and in violation of the principles of natural justice inasmuch there is denial of opportunity in providing the relevant documents before arriving at a conclusion in this matter. As such, I have no hesitation in holding that the action of the respondents in imposing the punishment of compulsory retirement on the petitioner is arbitrary and violative of Articles 14 and 16 of the Constitution of India and especially Article 21 inasmuch it guarantees and assures an integral facet of life. Accordingly, the impugned orders passed by the respondents are set aside as they suffer from legal infirmity of denial of opportunity, much less, fair and reasonable opportunity. At the same time, considering the fact that the bank's liability in this transaction was to the tune of Rs.194 lakhs during 14.12.1996 itself and to enable the bank to come to the correct conclusion as to whether the petitioner had allowed TODs with or without the knowledge of his superiors including the CMD, the matter is remitted back to the respondents for consideration afresh, after providing the petitioner with the documents and files which he claims have notings and queries and proceed further and complete the enquiry within a period of three months from the date of receipt of a copy of this order.

35. Before parting with the matter, from the involvement high profile dignitaries in the transaction and the flow of instructions from the level of CMD himself in addition to the other superior officers of the petitioner, it appears that the petitioner has only acted on those instructions. No doubt, it is the bounden duty of the petitioner to follow the regulations prescribed for the opening of account as well as grant of TODs. At the same time, the fact that he is also under the obligation to perform the duties as per the directions, both oral and written, of his superiors, should not be lost sight of. As such, at times, they may be termed to be security risk to their activities.

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Therefore, one would be circumspect, pragmatic and realistic to those actualities of life while angulating the background circumstances of his functions and the appropriate authority are not coming out with the real picture when the unfortunate officers such as the petitioner are in trouble. That apart, hanging fear of action from his superiors would dry up all springs of idealism of the employee and in the process coarsen the conscience and degrade his spirit. This feeling makes the delinquent officer carry out the directions as otherwise he would always apprehend certain action from his superiors. This is one such peculiar case where the petitioner has consistently pleaded that he has acted as per the directions of his superiors and allowed TODs and obtained confirmation and approval. But, to prove his case, he required the documents and files containing the notings and queries put by his higher ups in this regard for the purpose of scrutiny and he has been deprived of this opportunity to prove his case. This denial of opportunity to the petitioner has prejudiced him to a considerable extent and this is undoubtedly in violation of principles of natural justice. If the directions of the higher level officers are in the oral form, then the plight of the subordinate officers can only be pitiable. Therefore, it is always advisable that there should be written communication which would not give rise to any doubt about the conduct of the officer who acts in accordance with the directions of the superiors and in such view of the matter, this Court strikes a word of caution to the high level officers, particularly in the banking sector, to give instructions in writing to substantiate their oral instructions, as otherwise, it would only prejudice the officers such as the petitioner who are left with no other option but to carry out their oral instructions.

Resultantly, the writ petition is allowed in part with the above observations. No costs.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

cad

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To

1 The Chairman and Managing Director
Indian Bank
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2 The Executive Director
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3 The General Manager (Inspection)
Indian Bank,
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4. The Section Officer,
V.R.Section, High Court, Madras

1 cc To Mr.K.A.Ravindran, Advocate, SR.75246.
1 cc To M/S.Aiyar & Dolia, Advocate, SR.75687.

W.P. No.54 of 2001

VRK(CO)
RVL 05.01.2008

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